Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 12 AUGUST 23, 1978 No. 34

This issue contains

T.D. 78–260 through 78–272

Proposed Rulemaking

C.R.D. 78–9 through 78–12

International Trade Commission Notices

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 85 cents (single copy). Subscription price: $43.70 a year; $10.95 additional for foreign mailing.

U.S. Customs Service

Treasury Decisions

(T.D. 78-260)

Antidumping—Customs Regulations Amended

Part 153, Customs Regulations, relating to procedures under the Antidumping Act, 1921, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 153—ANTIDUMPING

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to antidumping investigations which involve merchandise from countries whose economies are determined to be "state-controlled" for the purpose of the Antidumping Act, 1921, as amended. The amended regulations provide that in determining the fair value of merchandise from a state-controlled-economy country through comparisons with prices or the constructed value of merchandise in a country or countries not regarded as having a state-controlled economy, the Secretary of the Treasury may give recognition to the level of economic development and to relative efficiencies or natural advantages in the state-controlled-economy country. In addition, the amended regulations provide that antidumping petitions which involve merchandise from a state-controlled-economy country should contain information pertinent to the new procedures.

EFFECTIVE DATE: The amendments will become effective as noted below under that part of the document entitled "Effective Date."

FOR FURTHER INFORMATION CONTACT: Theodore Hume, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5476.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 9, 1978, notice was published in the Federal Register (43 FR 1356) of a proposal to amend sections 153.7 and 153.27 Customs Regulations (19 CFR 153.7 and 153.27), concerning investigations under the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) ("the act"), which involve merchandise imported from a "state-controlled-economy country." Section 205(c) of the act (19 U.S.C. 164(c)), as added by the Trade Act of 1974, provides that the Secretary of the Treasury ("the Secretary") may determine the foreign market value of merchandise exported from a state-controlled-economy country on the basis of the normal costs, expenses, and profits for the merchandise, as reflected by the prices or the constructed value of such or similar merchandise from a non-state-controlled-economy country or countries. Based on its experience in administering this provision and in an effort to make comparisons on a more equivalent and realistic basis, it was concluded that when the foreign market value, and thereby the fair value, of merchandise from a state-controlled-economy country is being determined based upon the prices or the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries, the latter country or countries should be comparable in terms of economic development to the state-controlled-economy country in which the merchandise under investigation is produced.

Accordingly, it was proposed to amend section 153.7 to provide that prices shall be used as a basis of comparison if they are available from a non-state-controlled-economy country of comparable economic development. Where such or similar merchandise is not produced and sold in sufficient quantities in a non-state-controlled-economy country comparable in terms of economic development to the state-controlled-economy country from which the merchandise is exported, a constructed value could be used. When constructed value is used as the basis for fair value, it would be determined based upon the actual factors of production in the state-controlled-economy country as valued in a non-state-controlled-economy country of comparable economic development. If such factors and values cannot be adequately verified, then prices of such or similar merchandise sold or produced by any other non-state-controlled-economy country including, if necessary, the United States would be used.

It also was proposed to amend sections 153.27(a)(3) (i), (ii), and (iii) to distinguish clearly certain types of information required in any petition involving merchandise from a state-controlled-economy country, as well as to require that such petitions include information pertinent to the comparability of the state-controlled-economy country

with a non-state-controlled-economy country from which prices or constructed value are to be determined.

Interested persons were invited to submit comments on the proposed amendments on or before February 8, 1978. By notice published in the Federal Register on February 6, 1978 (43 FR 4871) the comment period was extended to February 22, 1978.

Discussion of Comments

USE OF PRICES OR CONSTRUCTED VALUE IN DETERMINING FAIR VALUE

A number of commenters argued that the proposed amendments would depart from the statutory requirements for determining the fair value of merchandise from a state-controlled-economy country. Some commenters interpreted the proposed amendments as giving preference to prices over constructed value in determining fair value. Others believed the amendments would make the constructed value of such or similar merchandise in a non-state-controlled-economy country the primary determinant of fair value.

Section 205(c) provides that the Secretary shall determine the foreign market value in antidumping investigations of merchandise from a state-controlled-economy country on the basis of the normal costs, expenses, and profits as reflected by either—

(1) the prices at which such or similar merchandise of a non-state-controlled-economy country or countries is sold either (A) for consumption in the home market, of that country or countries, or (B) to other countries, including the United States; or

(2) the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries.

It is the position of the Treasury Department that section 205(c) provides that either prices or constructed value may be used by the Secretary in determining the foreign market value and thereby the fair value, depending upon the information available in the particular case under consideration. To indicate more clearly that the regulations are intended to follow the statutory standards, section 153.7(a) retains the statutory structure.

AUTHORITY FOR APPLYING A STANDARD OF COMPARABILITY OF ECONOMIES

Some commenters questioned the authority of the Treasury Department to make adjustments in determining fair value based on differences in the level of economic development between the non-state-controlled-economy country or countries and the state-controlled-economy country, or to determine fair value on the basis of prices for such or similar merchandise in a non-state-controlled-economy country of comparable economic development.

One commenter objected that the proposed regulations would provide for examination of economic criteria and factors of production in the state-controlled-economy country whose merchandise is under investigation even though, in his view, the intent of the law is that information concerning markets and products in state-controlled-economy countries must be disregarded altogether.

Section 205(c) of the act provides that the Secretary shall determine the foreign market value, and thereby the fair value, of merchandise from a state-controlled-economy country on the basis of the normal costs, expenses, and profits as reflected by the prices or constructed value of such or similar merchandise in a non-state-controlled-economy country or countries, as set forth in sections 205(c)(1) and (c)(2) of the act. This provision reflects congressional concern that state control of an economy renders inherently suspect the prices and costs of producers in such countries. Therefore, the prices (or costs, if appropriate) are to be determined from a non-state-controlled economy country. In selecting a non-state-controlled-economy country as a surrogate for the country from which the products, in fact are being exported to the United States, the Treasury in the past has attempted to select a country that is most like the exporting country. The standard for selection, however, has not been articulated clearly. The present regulation seeks to provide such a standard, consistent with the principles of the Antidumping Act which attempt generally to establish the "fair value" of merchandise from the practices of the foreign producer or, in the instant case, of the surrogate producer.

One commenter argued that the most suitable non-state-controlled-economy country to be selected is the one with a market for sales most like the United States. This, however, is, not the usual priority established by the act. Under section 205(a) of the act and section 153.2(a) Customs Regulations (19 CFR 153.2(a)), it is the home market that is the preferred reference for establishing the foreign market value, and thereby the fair value. The proposed regulation attempts to follow that concept by using data from another country, but not a state-controlled-economy country, most like the unavailable home market. The prices in such a country will be the preferred reference, but costs may be used if sales in a non-state-controlled-economy country are insufficient or data is unavailable.

Even though the prices and costs in the state-controlled-economy country are not regarded as sufficiently reliable to establish the foreign market value, and thereby the fair value, of merchandise, the actual physical inputs in such a country can be recorded and verified. If adequately recorded and verified, they should provide a reliable measure of the capabilities of the producer to make and sell the merchandise in

question. These inputs then can be valued in a non-state-controlled-economy country, and the appropriate value established, which recognizes both the natural advantages and possible disadvantages of production for the producer. This method should accord most closely with the statutory requirement of section 205(c) of the act that the "normal costs" be found. Based on past experience and practice—which the Congress sought to incorporate into the act—the regulatory provisions hereby adopted seem best suited to achieving the purposes of the act as a whole in the unique circumstances to which they are addressed.

The Treasury Department believes that the new procedures are necessary for fulfilling properly its responsibilities under the act and are consistent with both its past practices and the law that adopted those practices. For example, the Treasury Department has based, in part, its selection of a non-state-controlled-economy country or countries for price comparison purposes on the comparabilities of that country's or countries' level of economic development with that of the state-controlled-economy country from which the merchandise under investigation was exported.

COMMENTS ON PROPOSED COMPARISON PROCEDURES

Some commenters argued that the fact that the proposed regulations require examination and comparison of production costs in various countries introduces elements of unreliability and speculation in determinations of fair value. Similarly, it was contended that there is no reliable basis for applying a standard of comparability between state-controlled-economy countries and non-state-controlled-econonomy countries. Further, it was suggested that without detailed guidelines and definitions in the regulations, persons affected will not be able to make informed judgments as to whether they are in compliance with the statute.

The regulations as adopted should make clear that costs of production in a non-state-controlled-economy country of comparable economic development will be used only if (1) price information is unavailable, and (2) verified information is made available by the state-controlled-economy country producer concerning the specific factors actually used in producing the merchandise exported to the United States. As stated in the amended regulations, these specific factors include, but are not limited to, hours of labor required, quantity of materials employed, and amounts of energy consumed. The valuation of these components and factors in a comparable non-state-controlled economy country also would be required to be subject to verification.

The basis for the use of constructed value in fair value determinations under the act generally is that the components and factors of production can usually be ascertained, for any given type of merchandise and, if verified, provide a reliable basis for determining fair value. Similarly, comparability in economic development will be determined from per capita gross national product, the level of infrastructure (particularly in the sectors of the economy at issue), and other widely use criteria for which generally reliable information is publicly available.

Proposed section 153.7(b)(i) is not being adopted. This section provided for adjustments for differences in economic factors between (1) a non-state-controlled-economy country or countries actually producing such or similar merchandise, and (2) a non-state-controlled-economy country or countries determined to be comparable in terms of economic development to the state-controlled-economy country whose merchandise was under investigation. Upon further consideration, it has been concluded that adoption of this provision would, as the commenters argued, be relatively speculative and unreliable, and would create an unnecessary burden upon persons involved in an investigation, without significantly improving the Treasury Department's ability to ascertain the normal costs, expenses, and profits.

USE OF U.S. PRICES OR CONSTRUCTED VALUE

Some commenters contended that section 205(c) of the act does not authorize the use of prices or constructed value of such or similar merchandise in the United States.

The Treasury Department does not agree with this interpretation of the statutory language. Proposed section 153.7(b)(3) is not new, but merely restates the provision for the use of prices or constructed value of U.S. produced merchandise in the existing section 153.7 and, indeed, in section 153.5 of the Customs Regulations in effect prior to the Trade Act of 1974. Specifically, former section 153.5 provided for the use of "prices at which such or similar merchandise is sold by a non-state-controlled-economy country." The Treasury Department considers that this language clearly authorized, and continues to authorize, the use of U.S. prices in appropriate situations.

EDITORIAL CHANGES

In addition to the change in format and deletion of proposed section 153.7(b)(i), the last sentence of proposed section 153.7(b)(ii), which is being adopted as the last sentence of section 153.7(c), is revised to read as follows:

To the constructed value thus obtained, there shall be added an amount for general expenses and profit, as required by section 206(a)(2) of the act (19 U.S.C.

165(a)(2)), and the cost of all containers and coverings and other expenses, as required by section 206(a)(3) of the act.

After consideration of all comments received and further review of the matter, it has been determined that the amendments should be adopted as proposed, except for the noted changes.

EFFECTIVE DATE

These amendments will take effect 30 days after publication with respect to investigations initiated on or after that date, and to the extent practicable, will be applied to any investigations pending on the effective date. Similarly, the Department intends to adopt the procedures set forth in these amendments for the purposes of determining whether special dumping duties should be assessed on any merchandise entered for consumption or withdrawn from warehouse for consumption on or after the effective date. Recognizing the need to assess the effects of these amendments, the Department will evaluate the impact of these amendments as soon as sufficient experience has been acquired, with a view to making further revisions if deemed appropriate.

DRAFTING INFORMATION

The principal author of this document was Edward T. Rosse, Regulations and Legal Publications Division, U.S. Customs Service. However, other personnel in the Customs Service and the Treasury Department assisted in its development.

AMENDMENTS TO THE REGULATIONS

Part 153 of the Customs Regulations (19 CFR pt. 153) is amended as set forth below.

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: August 3, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the Federal Register August 9, 1978 (FR 35263)]

PART 153—ANTIDUMPING

1. Section 153.7 is amended to read as follows:

153.7 Merchandise from state-controlled-economy country.

(a) *General.*—If the information available indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of fair value under

section 153.2, 153.3, or 153.4, the Secretary shall determine fair value on the basis of the normal costs, expenses, and profits as reflected by either:

(1) The prices, determined in accordance with subsection 205(a) and section 202 of the act (19 U.S.C. 164(a), 161) at which such or similar merchandise of a non-state-controlled-economy country or countries is sold either: (A) For consumption in the home market of that country or countries, or (B) to other countries, including the United States; or

(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country or countries.

(b) *Comparability of economies.*—(1) The prices as determined under section 153.7(a)(1), or the constructed value as determined under section 153.7(a)(2), shall be determined, to the extent possible, from the prices or costs in a non-state-controlled-economy country or countries at a stage of economic development comparable to the state-controlled-economy country from which the merchandise is exported. Comparability of economic development shall be determined from generally recognized criteria, including per capita gross national product and infrastructure development (particularly in the industry producing such or similar merchandise).

(2) If no non-state-controlled-economy country of comparable economic development can be identified, then the prices or constructed value as determined from another non-state-controlled-economy country or countries other than the United States shall be used.

(3) If neither section 153.7 (b)(1) nor (b)(2) provides an adequate basis for determining the price or constructed value of such or similar merchandise, then the prices or constructed value, as determined from the sales or production of such or similar merchandise in the United States, shall be used.

(c) *Use of constructed value.*—If such or similar merchandise is not produced in a non-state-controlled-economy country which is concluded to be comparable in terms of economic development to the state-controlled-economy country from which the merchandise is exported, the constructed value of such or similar merchandise may be determined from the costs of specific objective components or factors of production incurred in producing the merchandise in question, including, but not limited to, hours of labor required, quantities of raw materials employed, and amounts of energy consumed, if such information is obtained from the producer of the merchandise in the state-controlled-economy country under investigation, and verification of such information in the state-controlled-economy country is concluded to the satisfaction of the Secretary. Such components or

factors shall be valued and such values verified in a non-state-controlled-economy country determined to be reasonably comparable in economic development to the state-controlled-economy country under investigation. To the values thus obtained, there shall be added an amount for general expenses and profits, as required by section 206 (a)(2) of the act (19 U.S.C. 165(a)(2)), and the cost of all containers and coverings and other expenses, as required by section 206(a)(3) of the act (19 U.S.C. 165(a)(2)).

* * * * * * *

2. Paragraph (a)(3) (i–iii) of section 153.27 is amended by deleting subparagraph (iii) and revising subparagraph (i) and (ii) to read as follows:

153.27 Suspected dumping; nature of information to be made available.

(a) General.

* * * * * * *

(3) Price information; fair value.

(i) If the merchandise is being exported from a country other than one considered to be a "state-controlled-economy country" within the meaning of section 205(c) of the act (19 U.S.C. 164(c)):

(A) The home market price of such or similar merchandise in the country of exportation;

(B) If such information is unavailable, the price at which such or similar merchandise is sold to a third country from the country of exportation; or

(C) if the information required under section (a)(3)(i)(A) or (a)(3)(i)(B) is unavailable, the constructed value (as defined in section 206 of the act (19 U.S.C. 165)) of such merchandise produced in the country of exportation.

(ii) If the merchandise is being exported from a country considered to be a "state-controlled-economy country":

(A) The price or prices at which such or similar merchandise of a non-state-controlled-economy country of countries, considered to be comparable in terms of economic development to the state-controlled-economy country, is sold for consumption in the home market of that country or countries or to other countries (including the United States);

(B) The constructed value of such or similar merchandise in a non-state-controlled-economy country, determined in accordance with sections 153.7 (b) and (c).

(iii) Deleted.

* * * * * * *

(Sec. 201–212, 407, 42 Stat. 11 et seq., as amended, sec. 5, 72 Stat. 585, secs. 406, 407, 42 Stat. 18 (5 U.S.C. 301, 19 U.S.C. 160–173).)

(T.D. 78–261)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fibre textile products manufactured or produced in India

There is published below a directive of July 18, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton, wool, and manmade fiber textile products in certain categories manufactured or produced in India. This directive amends, but does not cancel, that committee's directive of January 27, 1978 (T.D. 78–72).

This directive was published in the Federal Register on July 19, 1978 (43 F.R. 31059), by the committee.

(QUO–2–1)

August 4, 1978.

WILLIAM D. SLYNE,
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., July 18, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of January 27, 1978, from the chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry for consumption and withdrawal from warehouse for consumption of certain cotton, wool, and manmade

fiber textile products, produced or manufactured in India, in excess of designated levels of restraint.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on July 21, 1978, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and manmade fiber textile products in categories 330–369, 431–469, and 630–669, as a group, exported from India on or before July 7, 1978, in excess of the previously established level of restraint. Ceilings established for individual categories within the group shall not be exceeded.

The actions taken with respect to the Government of India and with respect to imports of cotton, wool, and manmade fiber textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,

Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

(T.D. 78–262)

Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of manmade fiber textile products manufactured or produced in Haiti

There is published below a directive of June 15, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of manmade fiber textile products in category 634 manufactured or produced in Haiti. This directive amends, but does not cancel, that committee's directive of December 23, 1977 (T.D. 78–62).

This directive was published in the Federal Register on June 20, 1978 (43 F.R. 26472), by the committee.

(QUO-2-1)

August 4, 1978.

WILLIAM D. SLYNE,
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., June 15, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on December 23, 1977, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and manmade fiber textile products, produced or manufactured in Haiti.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of March 22, 1976, as amended, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on June 26, 1978, and for the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, entry into the United States for consumption, and withdrawal from warehouse for consumption, of manmade fiber textile products in category 634, produced or manufactured in Haiti, in excess of 16,949 dozen.[1]

Manmade fiber textile products in the foregoing category which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

---

[1] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1977.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), and March 3, 1978 (43 F.R. 8828).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Haiti and with respect to imports of manmade fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

(T.D. 78-263)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in India

There is published below a directive of May 31, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in certain categories manufactured or produced in India. This directive amends but does not cancel, that Committee's directive of January 27, 1978 (T.D. 78-72).

This directive was published in the Federal Register on June 5, 1978 (43 F.R. 24351), by the committee.

(QUO-2-1)

August 4, 1978.

WILLIAM D. SLYNE,
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., May 31, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on January 27, 1978, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and manmade fiber textile products, produced or manufactured in India.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on June 5, 1978, and for the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in categories 336, 338, 339, 340, 341, and 347, 348, produced or manufactured in India, in excess of the following levels of restraint. Merchandise accompanied by the elephant-shaped certification shall also be charged to these levels.

Category	*12-month level of restraint*
336	168,190 dozen
338/339/340	919, 351 dozen
341	2, 012, 117 dozen
347/348	106, 148 dozen

Cotton textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), and March 3, 1978 (43 F.R. 8828).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of India and with respect to imports of cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

(T.D. 78-264)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in Pakistan

There is published below a directive of April 17, 1978, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in categories 338 and 339 manufactured or produced in Pakistan. This directive amends, but does not cancel, that committee's directive of January 19, 1978 (T.D. 78-71).

This directive was published in the Federal Register on April 21, 1978 (43 F.R. 17027), by the committee.

(QUO-2-1)

August 4, 1978.

William D. Slyne,
For Ben L. Irvin, Acting
Dirctor, *Duty Assessment Division.*

269-767—78——3

U.S. DEPARTMENT OF COMMERCE,
INDUSTRY AND TRADE ADMINISTRATION,
Washington, D.C., April 17, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on January 19, 1978, by the chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain specific categories of cotton textile products, produced or manufactured in Pakistan.

The first paragraph of the directive of January 19, 1978, is amended, effective on April 18, 1978, to show the following levels of restraint for categories 338 and 339, produced or manufactured in Pakistan and exported to the United States during the 12-month period which began on January 1, 1978, and extends through December 31, 1978:

Category	*12-month Level of Restraint*
338	1,597,222 dozen of which not more than 799,583 dozen shall be in T.S.U.S.A. 380.-0651 and 380.0652
339	347,222 dozen of which not more than 122,083 dozen shall be in T.S.U.S.A. 382.-0669 and 382.0671

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 78-265)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in India

There are published below directives of May 26, 1978, May 31, 1978, June 9, 1978, and June 15, 1978, received by the Commissioner of Customs from the Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton, wool, and manmade fiber textile products in certain categories manufactured or produced in India. These directives amend, but do not cancel, that committee's directive of January 27, 1978 (T.D. 78-72).

These directives were published in the Federal Register on June 1, 1978 (43 F.R. 23753), June 5, 1978 (43 F.R. 24352), June 14, 1978 (43 F.R. 25710), and June 28, 1978 (43 F.R. 28029), respectively, by the committee.

(QUO-2-1)

August 4, 1978.

WILLIAM D. SLYNE,
(For Ben L. Irvin,
Acting Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., May 26, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: On January 27, 1978, the chairman Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption and withdrawal from warehouse for consumption during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, of cotton, wool, and manmade fiber textile products in certain specified categories, produced or manufactured in India, in excess of designated levels of

restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to paragraph 7 of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on May 26, 1978, the 12-month level of restraint established in the directive of January 27, 1978 for categories 330–369, 431–469, and 630–669, as a group, to the following:

Category	Amended 12-month level of restraint[2]
330–369, 431–469 and 630–669	38,943,300 square yards equivalent

The actions taken with respect to the Government of India and with respect to imports of cotton, wool and manmade fiber textile products from India have been determined by the committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

RONALD I. LEVIN,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 78–266)

Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certi-

---

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Manmade Fiber Textile Agreement of Dec. 30, 1977, as amended, between the Governments of the United States and India which provide, in part, that, with the exception of apparel products in categories 330-359 which are accompanied by the elephant-shaped certification, (1) within the aggregate, group limits may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The levels of restraint heve not been adjusted to reflect any imports after Dec. 31, 1977.

fied the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in T.D. 78–237 for the following country. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Japan yen:
July 28, 1978 ..... $0.005247

(LIQ–3)

August 4, 1978

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78–267)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:

July 24, 1978	$0.5816
July 25, 1978	.5816
July 26, 1978	.5816
July 27, 1978	.5816¼
July 28, 1978	.5816

Hong Kong dollar:

July 24, 1978	$0.2146
July 25, 1978	.2146
July 26, 1978	.2149
July 27, 1978	.2147
July 28, 1978	.2147

Iran rial:

July 24–28, 1978	$0.0141½

Philippines peso:	
July 24–28, 1978	$0.1364
Singapore dollar:	
July 24, 1978	$0.4385
July 25, 1978	.4394
July 26, 1978	.4391
July 27, 1978	.4390
July 28, 1978	.4400
Thailand baht (tical):	
July 24–28, 1978	$0.0492

(LIQ-3)

August 4, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-268)

Synopses of Drawback Decisions

The following are synopses of drawback rates and amendments issued October 6, 1977, to April 7, 1978, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

(DRA-1-09)

August 4, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) Amikacin disulfate sterile parentals.—Manufactured under section 1313(a) by Bristol Laboratories Corp., Mayaguez, P.R., with the use of imported amikacin bulk base.

Rate effective on articles manufactured on and after January 1, 1978, and exported on and after January 17, 1978.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., March 14, 1978.

(B) Automotive and industrial parts.—T.D. 73-164-M, as amended, covering, among other things, the foregoing articles manufactured under section 1313(b) by Hoover Ball and Bearing Co., Saline, Mich., at its various factories, with the use of, among other things, hot- and

cold-rolled steel sheet, steel wire, and unfinished metal stampings, further amended to cover a change of the company's name to Hoover Universal.

Amendment effective on articles exported on and after January 17, 1978, the date of the name change.

Amendment issued by Regional Commissioner of Customs, New York, N.Y., April 7, 1978.

(C) Brake assemblies, subassemblies, and parts thereof.—T.D. 54731–F, as amended, covering automobile, truck, tractor, and vehicle wheels, and parts thereof, manufactured under section 1313(b) by Kelsey-Hayes Co., Romulus, Mich., at its various factories with the use of steel strip, sheet, or plate, further amended to cover brake assemblies, subassemblies and parts thereof, manufactured under section 1313(a) by the company with the use of imported drive ring adjusters at its Jackson and Romulus, Mich., factories, and at its additional factory located at Mount Vernon, Ohio.

Amendment effective on articles manufactured on and after July 1, 1975, and exported on and after August 1, 1975.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., October 6, 1977.

(D) Cranes, truck mounted.—Manufactured under section 1313(a) by Hanson Machinery Co., Tiffin, Ohio, at its four Tiffin, Ohio, factories, with the use of imported transit chassis.

Rate effective on articles manufactured on and after August 1, 1977, and exported on and after September 19, 1977.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., January 24, 1978.

(E) D1-Menthol, 1-Menthol, RC-Menthol, d-Menthol fraction, d1-Isomenthol fraction and d1-Neomenthol.—Manufactured under section 1313(a) by Haarmann & Reimer Corp., Springfield, N.J., at its Charleston, S.C., factory, with the use of intermediates for menthol production B, C, D, and E.

Rate effective on articles manufactured on and after September 21, 1977, and exported on and after October 7, 1977.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., January 3, 1978.

(F) Diesel engines.—Manufactured under section 1313(a) by Perkins Engines, Inc., Farmington, Mich., with the use of imported engine blocks and engine parts. Identification of the imported merchandise to be accomplished in accordance with the provisions of section 22.4(f) of the Customs Regulations.

Rate effective on articles manufactured on and after March 1, 1974, and exported on and after November 27, 1974.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., February 15, 1978.

(G) Dyestuffs and intermediates.—T.D. 55742–B, as amended, covering dyestuffs and intermediates manufactured under section 1313(a) by Verona Corp., Union, N.J., at its two Bayonne, N.J., factories, with the use of imported dyestuffs and dyestuff intermediates manufactured thereunder, further amended to cover the foregoing articles manufactured by Mobay Chemical Corp., Verona Dyestuff Division, Union, N.J., successor at the foregoing factories.

Amendment effective on articles exported on and after September 30, 1971, the date of succession.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., October 17, 1977.

(H) Engines, diesel marine, complete.—T.D. 56384–G, as amended, covering the foregoing articles manufactured under section 1313(a) by Lehman Manufacturing Co., Inc., Linden, N.J., with the use of imported or drawback basic diesel marine engines, further amended to cover the above-mentioned articles manufactured by Lehman Power Corp., Linden, N.J., successor.

Amendment effective on articles exported on and after August 1, 1977, the date of succession.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., October 14, 1977.

(I) Food products, various.—T.D. 44664–E, as amended, covering assorted processed foods manufactured under section 1313 (a) and (b) by National Biscuit Co., East Hanover, N.J., at its various factories, with the use of, among other things, imported or drawback refined sugar, further amended to cover the foregoing articles manufactured by Nabisco, Inc., East Hanover, N.J., successor.

Amendment effective on articles exported on and after April 27, 1971, the date of succession.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., March 14, 1978.

(J) Generators, steam and reactor vessels.—Manufactured under section 1313(a) by the Babcock and Wilcox Co., New York, N.Y., at its Barberton, Ohio, and Mount Vernon, Ind., factories, with the use of imported component parts such as tubesheets, nozzles, nozzle belt

forgings, flanges, bolts, nuts, washers, shells, plates, tubes, discs, weld wire, hollow forgings, heads, and bar stock.

Rate effective on articles manufactured on and after October 1, 1973, and exported on and after January 2, 1975.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., January 10, 1978.

(K) Hardware items, builders'.—T.D. 53992–C, as amended, covering builders' hardware items manufactured under section 1313(b) by Weiser Co., South Gate, Calif., with the use of, among other things, brass ingot, rod, strip, and coil, further amended to cover the foregoing articles manufactured by Norris Industries, successor.

Amendment effective on articles exported on and after December 1, 1967, the date of succession.

Amendment issued by Regional Commissioner of Customs, Los Angeles, Calif., November 17, 1977.

(L) Leather, pigment colored and surface textured.—Manufactured under section 1313(a) by A. Harvey Leather Finishing, Inc., Summerdale, N.J., with the use of imported hides.

Rate effective on articles manufactured on and after January 3, 1977, and exported on and after February 14, 1977.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., on January 4, 1978.

(M) Leather, pigment colored and surface textured.—Manufactured under section 1313(a) by Pro Leather Finishers, Inc., Johnstown, N.Y. with the use of imported hides.

Rate effective on articles manufactured on and after May 1, 1977, and exported on and after May 25, 1977.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., January 4, 1978.

(N) Microfiche readers.—Manufactured under section 1313(a) by Data View Corp., Mayville, Wis., at its Allentown, Wis., factory, with the use of imported lenses.

Rate effective on articles manufactured on and after October 3, 1977, and exported on and after November 4, 1977.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., January 4, 1978.

(O) Military berets.—Manufactured under section 1313(a) by Denmark's Military Equipment Co., Inc., a division of DME Industries, Inc., New York, N.Y., with the use of imported beret shells.

269–767—79——4

Rate effective on articles manufactured on and after November 10, 1977, and exported on and after November 16, 1977.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., March 13, 1978.

(P) O-Secondary Butyl Phenyl-N-Methl Carbamate ("BPMC").—Manufactured under section 1313(a) by Consolidated Chemical Co., Palacios, Tex., with the use of imported and drawback O-Secondary Butyl Phenol.

Rate effective on articles manufactured on and after June 6, 1977, and exported on and after June 24, 1977.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., December 8, 1977.

(Q) Pianos, grand and upright.—T.D. 74–155–N, covering the foregoing articles manufactured under section 1313(a) by Kimball Piano and Organ Co., Inc., West Baden, Ind., with the use of imported piano keyboards, actions, and hammers, amended to cover a change in the company's name to Kimball International, Inc.

Amendment effective on articles exported on and after July 1, 1974, the date of the name change.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., December 9, 1977.

(R) Piece goods, bleached, dryed and/or printed; and redyed or stripped and redyed.—T.D. 44469–U, as amended, covering the foregoing articles manufactured under section 1313(a) by the United Piece Dye Works, New York, N.Y., at its Lodi, N.J.; North Charleston, S.C.; and Bluefield, Va., factories, with the use of piece goods imported in the greige or woven under drawback regulations; and imported or drawback dyed piece goods, respectively, further amended to cover the foregoing articles manufactured by the company at its additional factories located at Edenton, N.C.; and Middletown, Pa.

Amendment effective on articles manufactured on and after January 2, 1974, and exported on and after January 8, 1974.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., October 27, 1977.

(S) Pigmentene.—T.D. 77–123–0, covering the foregoing article manufactured under section 1313(a) by Special Nutrients, Inc., Miami, Fla., at its Lakeview, Calif., factory, with the use of imported marigold extract, amended to cover the foregoing article manufactured by the company with the additional use of imported oleoresin paprika.

Amendment effective on articles manufactured on and after January 2, 1974, and exported on and after June 9, 1976.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., April 7, 1978.

(T) Potassium fluotantalate, tantalum oxide, and columbian oxide.—T.D. 44664–S; T.D. 52387–F, as amended; T.D. 53483–A, as amended; T.D. 66–69–B; T.D. 66–214–K, as amended; T.D. 69–111–R, covering, among other things, the foregoing articles manufactured under section 1313(b) by Mallinckrodt Chemical Works, St. Louis, Mo., with the use of tantalum/columbian-bearing ores and concentrates, further amended to cover a change in the company's name to Mallinckrodt, Inc.

Amendment effective on articles exported on and after April 23, 1974, the date of the name change.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., November 2, 1977.

(U) Radar warning systems.—Manufactured under section 1313(a) by General Instrument Corp., Clifton, N.J., at its Hicksville, N.Y., factory, with the use of imported circuit card overwrite.

Rate effective on articles manufactured on and after March 1, 1978, and exported on and after April 1, 1978.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., December 28, 1977.

(V) Shovels, power; draglines; drills; and parts thereof.—T.D. 77–292–Q, covering the foregoing articles manufactured under section 1313(b) by Marion Power Shovel Co., Inc., Marion, Ohio, with the use of hot-rolled steel plates, amended to cover the foregoing manufactured by Dresser Industries, Inc., Marion Power Shovel Division, Marion, Ohio, successor.

Amendment effective on articles exported on and after August 1, 1977, the date of succession.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., March 13, 1978.

(W) Sugar and sirups.—T.D. 52338–Q, as amended, covering, among other things, inverted, filtered, or inverted and filtered refiners' sirup and melted and inverted raw sugar and washed raw sugar produced under sections 1313 (a) and (b) by SuCrest Corp., New York, N.Y., at its Brooklyn, N.Y., and Chicago, Ill., refineries, with the use of refiners' sirup manufactured under drawback regulations

and with the use of imported raw sugar or washed raw sugar, further amended to cover the foregoing articles manufactured by Revere Sugar Corp., New York, N.Y., successor.

Amendment effective on articles exported on and after December 14, 1977, the date of succession.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., January 16, 1978.

(X) Tape and film, skived and pressure sensitive.—T.D. 69–111–W, covering skived and pressure sensitive tape and film manufactured under section 1313(b) by Technical Florocarbons Engineering, Inc., Warwick, R.I., with the use of polytetrafluoroethylene, amended to cover the foregoing articles manufactured by TFE Industries Division, Dayco Corp., Kalamazoo, Mich., successor.

Amendment effective on articles exported on and after December 8, 1975, the date of succession.

Amendment issued by the Regional Commissioner of Customs, New York, N.Y., December 16, 1977.

(Y) Transceivers.—Manufactured under section 1313(a), by Hy-Gain de Puerto Rico, Inc., Humacao, P.R., at its Humacao and Naguabo, P.R., factories, with the use of imported transceiver component parts, such as, but not limited to, kits, chassis, printed circuit boards, and assemblies.

Rate effective on articles manufactured on and after April 1, 1975, and exported on and after October 17, 1975.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., December 12, 1977.

(Z) Vitadol.—Manufactured under section 1313(a) by The Upjohn Co., Kalamazoo, Mich., with the use of imported or drawback vitamins.

Rate effective on articles manufactured on and after January 1, 1978, and exported on and after January 3, 1978.

Rate issued by the Regional Commissioner of Customs, New York, N.Y., March 14, 1978.

(T.D. 78-269)

Cotton Textiles and Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textiles and cotton textile products manufactured or produced in Brazil

There is published below a directive of July 7, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textiles and cotton textile products in certain categories manufactured or produced in Brazil.

This directive was published in the Federal Register on July 12, 1978 (43 F.R. 29975), by the committee.

(QUO-2-1)

August 8, 1978.

WILLIAM D. SLYNE,
(For Ben L. Irvin, *Acting Director, Duty Assessment Division*).

UNITED STATES DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., July 7, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of April 22, 1976, as amended, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on August 1, 1978, and for the 12-month period, beginning on April 1, 1978, and extending through March 31, 1979, entry into the United States for consumption, or withdrawal from warehouse for consump-

tion, of cotton textiles and cotton textile products in categories 300–301, as a group, and individual categories 313, 315, 317, 319, 320, 337, 339, 340, 345, 347, 348, 350, 352, 363, and 369 in excess of the following levels of restraint:

Category	*12-month level of restraint* [1]	
300–301	9,955,652	pounds
313	17,516,970	square yards
315	14,769,210	square yards
317	6,525,930	square yards
319	3,663,680	square yards
320	9,502,670	square yards
337	70,326	dozen
339	212,350	dozen
340	198,881	dozen
345	46,667	dozen
347	143,905	dozen
348	97,694	dozen
350	44,940	dozen
352	120,754	dozen
363	7,895,862	numbers
369 [2]	497,782	pounds
369 [3]	904,150	pounds

[1] The levels of restraint have not been adjusted to account for any imports after Mar. 31, 1978.

[2] In category 369, only T.S.U.S.A. numbers:

360.2000	360.7600	361.1820
360.2500	360.8100	361.5000
360.3000	361.0510	361.5422
		361.5630

[3] In category 369, all T.S.U.S.A. numbers not listed in footnote 2.

Cotton textiles and cotton textile products in the foregoing categories, produced or manufactured in Brazil and exported to the United States prior to April 1, 1978, shall not be subject to this directive.

Cotton textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future according to the provisions of the Bilateral Cotton Textile Agreement of April 22, 1976, as amended, between the Governments of the United States and the Federative Republic of

Brazil which provide, in part, that: (1) Within the aggregate and applicable group limits, specific limits may be exceeded by designated percentages; (2) specific ceilings may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828) and June 22, 1978 (43 F.R. 26773).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Federative Republic of Brazil and with respect to imports of cotton textiles and cotton textile products from Brazil have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 78–270)

Wool and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of wool and manmade fiber textile products manufactured or produced in the Republic of Korea

There is published below a directive of June 27, 1978, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, concerning restriction

on entry of wool and manmade fiber textile products in categories 440 and 605 manufactured or produced in the Republic of Korea. This directive amends, but does not cancel, that committee's directive of December 27, 1977 (T.D. 78–87).

This directive was published in the Federal Register on June 30, 1978 (43 F.R. 28531), by the committee.

(QUO–2–1)

August 8, 1978.

WILLIAM D. SLYNE,
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., June 27, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on December 27, 1977 by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 3, 1978, and for the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in category 440 and manmade

fiber textile products in category 605, produced or manufactured in the Republic of Korea, in excess of the following levels of restraint:

Category	*12-month level of restraint* [1]
440	199,999 dozen
605	2,571,429 pounds of which not more than 1,303,951 pounds shall be in T.S.U.S.A. No. 316.6020

[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1977.

Wool and manmade fiber textile products in categories 440 and 605 which have been exported to the United States prior to January 1, 1978, shall not be subject to this directive.

Wool and manmade fiber textile products in categories 440 and 605 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 F.R. 884), as amended on January 25, 1978 (43 F.R. 3421), March 3, 1978 (43 F.R. 8828), and June 22, 1978 (43 F.R. 26773)).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of wool and manmade fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

269-767—78——5

(T.D. 78-271)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in India

There is published below a directive of June 21, 1978, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton, wool, and manmade fiber textile products in certain categories manufactured or produced in India. This directive amends, but does not cancel, that committee's directives of January 27, 1978 (T.D. 78-72) and April 24, 1978 (T.D. 78-135).

This directive was published in the Federal Register on June 27, 1978 (43 F.R. 27880), by the committee.

(QUO-2-1)

August 8, 1978.

WILLIAM D. SLYNE,
(For Ben L. Irvin, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR INDUSTRY AND TRADE,
Washington, D.C., June 21, 1978.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directives of January 27 and April 24, 1978, from the chairman of the Committee for the Implementation of Textile agreements which established levels of restraint for certain cotton, wool, and manmade fiber textile products, produced or manufactured in India and exported to the United States during the 12-month period beginning on January 1, 1978.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of

March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on June 26, 1978, no longer to charge T.S.U.S.A. numbers 360.1000 and 360.1500 to the levels of restraint established for category 465 and categories 330–369, 431–469, and 630–669, as a group. Further, 1,649,684 square feet should be deducted from the foregoing levels of restraint to account for imports in T.S.U.S.A. No. 360.1000 and 360.1500 during the period beginning on January 1, 1978, and extending through April 30, 1978.

The actions taken with respect to the Government of India and with respect to imports of wool textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

(T.D. 78-272)

Changes in the Field Organization of the Customs Service

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 101—GENERAL PROVISIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service by changing the status of Point Roberts, Wash., from a Customs station under the supervision of the port of Blaine, Wash., to a new port of entry in the Seattle, Wash., Customs district. This change is needed because of administrative problems resulting from the unique geographical location of Point Roberts.

This document also revokes the designation of Hogansburg, Morristown, and Waddington, N.Y., as Customs stations in the Ogdensburg, N.Y., Customs district. Due to minimal Customs transactions

at these stations, they have not been staffed for several years. The areas they once served are adequately covered by the ports of entry at Massena and Ogdensburg, N.Y.

EFFECTIVE DATE: September 14, 1978.

FOR FURTHER INFORMATION CONTACT: Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs station of Point Roberts, Wash., is located at the tip of a peninsula just south of the 49th parallel which is part of the boundary between the United States and Canada. It is almost entirely surrounded by the Strait of Georgia and Boundary Bay. Due to its location, Point Roberts is isolated from the port of Blaine, Wash., its supervising Customs port. Customs officers from Blaine must either cross Boundary Bay by vessel or go north into Canada, proceed westerly and then southerly down the peninsula into Whatcom County, Wash., to reach Point Roberts. This isolation causes many administrative problems for the Customs station of Point Roberts and the port of entry at Blaine.

Therefore, on May 26, 1978, a notice of a proposal to create a new port of entry at Point Roberts was published in the Federal Register (43 F.R. 22752) which would allow Customs to provide better on-site port administration and supervision of the border crossing station and would facilitate the entry and clearance of yachts at Point Roberts.

The notice also proposed to revoke the designation of Hogansburg, Morristown, and Waddington, N.Y., as Customs stations in the Customs district of Ogdensburg, N.Y. (region I). Due to minimal Customs transactions at these stations, they have not been staffed for several years. The areas they once served are adequately covered by the ports of entry at Massena and Ogdensburg, N.Y.

These field organization changes were proposed by the Customs Service as part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

Interested parties were given until June 26, 1978, to submit comments regarding both proposals. No comments were received.

Accordingly, the status of Point Roberts is changed from a Customs station to a port of entry in the Customs district of Seattle, Wash. (region VIII). The port limits are the same as the present station limits, that is, all the land below the 49th parallel and constituting the peninsula known as Point Roberts, Whatcom County, Wash. Also,

the designation of Hogansburg, Morristown, and Waddington, N.Y., as Customs stations, is revoked.

AMENDMENTS TO THE CUSTOMS REGULATIONS

To reflect these changes, part 101 of the Customs Regulations (19 CFR pt. 101) is amended in the following manner:

1. The table in section 101.3(b) is amended by inserting "Point Roberts, including the territory described in T.D. 78–272." directly below "Oroville (E.O. 5206, Oct. 11, 1929)." in the column headed "Ports of entry" in the Seattle, Wash., Customs district (region VIII).

2. The table in section 101.4(c) is amended by making the following changes:

a. "Seattle, Wash_____" is deleted from the column headed "District", "Point Roberts, Wash_____" is deleted from the column headed "Customs stations", and "Blaine." is deleted from the column headed "Port of entry having supervision".

b. "Hogansburg, N.Y._____" is deleted from the column headed "Customs stations", and the corresponding reference to "Massena." Is deleted from the column headed "Port of entry having supervision."

c. "Morristown, N.Y_____" is deleted from the column headed "Customs stations", and the corresponding reference to "Ogdensburg." is deleted from the column headed "Port of entry having supervision".

d. "Waddington, N.Y._____" is deleted from the column headed "Customs stations", and the corresponding reference "Do." (indicating "Ogdensburg") is deleted from the column headed "Port of entry having supervision."

AUTHORITY

This change is made under the authority vested in the President by section 1 of the act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR, 1949–1953 Comp., ch. II), and pursuant to authority provided by Treasury Department Order No. 190, rev. 15 (43 F.R. 11884).

DRAFTING INFORMATION

The principal author of this document was Teresa M. Polino, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: August 3, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register August 15, 1978 (FR 36055)]

U.S. Customs Service

Proposed Rulemaking

The following notice of proposed rulemaking was recently published in the Federal Register. The Customs Service welcomes comments from the public in regard to the proposal. The comments must be in writing, addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, 1301 Constitution Avenue NW., Washington, D.C. 20229, and must be received on or before the date specified in the notice.

ROBERT E. CHASEN,
Commissioner of Customs.

(19 CFR Part 101)

GENERAL PROVISIONS

Proposed Changes in the Field Organization of the Customs Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This notice proposes to change the field organization of the Customs Service: (1) By extending the existing port limits of the Sault Ste. Marie, Mich., port of entry to include the Chippewa County International Airport; (2) by establishing a new port of entry at Dalton Cache, Alaska, and by transferring supervisory authority over the Customs station at Haines, Alaska, from the Skagway, Alaska, port of entry to the proposed port of Dalton Cache; (3) by designating the Minot, N. Dak., International Airport as a Customs station under the supervision of the port of Pembina, N. Dak.; (4) by extending the existing port limits of the Saginaw-Bay City, Mich., port of entry to include Flint, Mich., in a consolidated port of "Saginaw-Bay City-Flint;" and (5) by establishing a new Customs district at Dallas/Fort Worth, Tex., to include the ports of Dallas/Fort Worth, Amarillo, and Lubbock, Tex., and Tulsa and Oklahoma City, Okla., all of which are now in the Houston, Tex., Customs district.

These proposed changes are part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATES: Comments must be received on or before: October 16, 1978.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, the Customs Service proposes to make the following changes in its field organization.

SAULT STE. MARIE, MICH.

Because of a shift in air service from the City-County Airport, located within the present limits of the Sault Ste. Marie Customs port of entry, to the Chippewa County International Airport, located outside of the present port limits, it is proposed to extend the limits of the Sault Ste. Marie, Mich., port of entry (region IX) to include the Chippewa County International Airport.

As extended, the geographical boundaries of the Sault Ste. Marie, Michigan, port of entry would include the following:

All the territory within the corporate limits of Sault Ste. Marie—that is, the area bordered on the north, northeast, and northwest by the St. Mary's River, and on the south, southeast, and southwest by 3 Mile Road—and that area from the Sault Ste. Marie city limits (3 Mile Road) along Interstate Route 75 in a southerly direction, passing through sections 24, 25, 26, and 35 of township 47 north, range 1 west of Soo Township; sections 2, 11, 14, 15, 22, 27, 33, and 34 of township 46 north, range 1 west; sections 4, 5, and 8 of township 46 north, range 1 west of Dafter Township; and including section 18 of township 45 north, range 1 west and section 24 of township 45 north, range 2 west of Kinross Township, including all ramps and exits at marker 378; from marker 378 in a southeasterly direction along State Highway 63 within section 24 of township 45 north, range 2 west of Kinross Township, including those parcels of land known as the Chippewa County International Airport located in sections 5, 6, and 8 of township 44 north, range 1 west of Pickford Township and sections 30, 31, and 32 of township 45 north, range 1 west of Kinross Township.

DALTON CACHE AND HAINES, ALASKA

Vessels (including ferryboats), vehicles, persons, and cargo entering Alaska from Canada in the area of Dalton Cache/Haines presently undergo Customs formalities at the Customs station at Haines, located 42 miles south of the United States/Canada border on State Route 7.

Construction of a Federal facility at the border crossing at Dalton Cache began in the spring of 1978. When the facility is completed, Customs will be able to perform its functions relating to the entry and clearance of vehicles, persons, and cargo at Dalton Cache. Customs at Haines will continue to be responsible for the entry and clearance of ferryboats and other vessels. The entry and clearance of vehicles, persons, and cargo at the border crossing instead of 42 miles to the south will enhance Customs enforcement capabilities while at the same time enabling Customs to provide more convenient service to the public.

For these reasons, it is proposed to designate Dalton Cache, Alaska (region VIII), as a Customs port of entry. The geographical boundaries of the Dalton Cache port of entry would include the following:

> That area within the boundaries of section 14, township 28 south, range 54, east of Copper River meridian, in the State of Alaska.

Because of the geographical and work relationships of Haines to Dalton Cache, Customs has determined that Haines could be more effectively supervised if it were maintained as a station under the jurisdiction of the proposed port of Dalton Cache instead of under the port of Skagway, Alaska, as at present. Accordingly, it also is proposed to transfer jurisdiction over the Customs station at Haines from the Skagway port of entry to the proposed Dalton Cache port of entry. The geographical limits of the Haines Customs station would include the following:

> That area within the boundaries of sections 26, 27, 28, and 29, township 30 south, range 59, east of Copper River meridian, in the State of Alaska.

MINOT, NORTH DAKOTA

It is proposed to designate the Minot, N.D., International airport as a Customs station under the supervision of the Pembina, N.D., port of entry (region IX). Although Customs personnel are stationed at the airport, its present lack of designation as a Customs station has resulted in problems in the clearance of in-bound shipments of merchandise which will be resolved by the proposed action.

SAGINAW-BAY CITY AND FLINT, MICH.

To meet the expanding needs of the importing community in the Flint, Mich., area, and to provide for the most efficient use of avail-

able Customs manpower and other resources in that area, it is proposed to extend the limits of the Saginaw-Bay City, Mich., port of entry (region IX) to include Flint, Mich., in a consolidated port of entry to be known as "Saginaw-Bay City-Flint." As extended, the geographical boundaries of the consolidated port of entry of Saginaw-Bay City-Flint, Mich. would include the following:

> All the territory within the corporate limits of Saginaw and Bay City, Mich.; the territory embracing the townships of Zilwaukee, Carrolton, and Buena Vista, in Saginaw County; the townships of Portsmouth and Frankenlust, in Bay County; and the right-of-way of Interstate Route 75, south to and including Flint Township; the city of Flint; and that portion of Genesee Township bounded by Saginaw Street on the west, Stanley Road on the north, Lewis Road on the east, and the city of Flint on the south, all in the State of Michigan.

DALLAS/FORT WORTH, TEX.

Dallas/Fort Worth is the only metropolitan area among the Nation's 10 largest in import-export transactions that does not have a Customs district office, and its Customs collections exceed those of 13 established districts. In terms of airborne shipping weights and dollar value, Dallas/Fort Worth is exhibiting a greater growth rate than many existing districts. The airport has the fifth largest passenger volume in the United States. The Customs entry workload at Dallas/Fort Worth is 27 percent of the total for the Houston district, of which it is a part. Dallas/Fort Worth also clears 47 percent of the Houston's district's total air passengers.

To accomodate the present needs and growth potential of the Dallas/Fort Worth, Tex., area, it is proposed to establish a new Customs district in region VI. The new district would include the ports of entry of Dallas/Fort Worth, Amarillo, and Lubbock, Tex., and Tulsa and Oklahoma City, Okla., all of which now are in the Houston, Tex., district. The geographical boundaries of the new district would include the following:

> That portion of the State of Texas north of 32 degrees north latitude and all of the State of Oklahoma.

If the new district is established, the northern boundaries of the Houston and Laredo, Tex., Customs districts would become 32 degrees north latitude.

If the proposed changes are adopted, the lists of Customs regions, districts and ports of entry in section 101.3 of the Customs Regulations (19 CFR 101.3) and the list of Customs stations and their supervisory ports in section 101.4 of the Customs Regulations (19 CFR 101.4) would be amended to reflect the changes.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b) of the Customs Regulations (19 CFR 103.8(b) during regular business hours at the Regulations and Legal Publications Division, Room 2335, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This change is proposed under the authority vested in the Presidnet by section 1 of the act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., ch. II), and pursuant to authority provided by Treasury Department Order No. 190, rev. 15 (43 F.R. 11884).

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: August 4, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register August 15, 1978 (FR 36108)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Reference Area, Room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Dated: August 9, 1978.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

Date of Decision	File Number	Issue
7/13/78	103365	Carrier control: application of coastwise laws to activities of registered fish-processing vessel with a restrictive coastwise endorsement
7/11/78	103443	Manifesting: submission of manifests from vessels arriving from Canada having on board cargo destined for foreign countries
7/12/78	103499	Carrier control: use of Japanese freezer ship to process walrus carcasses for export
7/14/78	103538	Carrier control: use of foreign-flag crane vessels at oil drilling platforms on the U.S. outer continental shelf
7/20/78	209203	Liquidation: duty-free entry of tire components for the purpose of testing domestic machinery
7/24/78	709218	Restricted merchandise: Consumer Product Safety Commission does not require UL approval or other inspection for imported home electric appliances
7/21/78	709292	Country of origin marking: watch movements assembled in Hong Kong from West German parts; watch dials manufactured in Hong Kong and attached to the movements in Hong Kong
7/25/78	709320	Country of origin marking: proper designations for Haiti, Taiwan, Mexico, Korea, and the Philippines
7/31/78	709325	Country of origin marking: work gloves
7/10/78	054763	Classification: parts of logging machinery
7/21/78	056473	Classification: professional deep sea fishing reel mounted to vessel and operated by motor; hydraulic net hauler; seawater ice machine; and fish grading and sorting machine
7/24/78	056763	Classification: blast furnace energy recovery turbine
7/21/78	056805	Classification: power pack and wall charger for a continuously operating baby swing
7/21/78	056853	Duty assessment: titanium sheets rolled in column 1 country from ingots originating in column 2 country
7/24/78	056951	Classification: flanged spools used in manufacturing or shipping wire or cable
7/21/78	056972	Classification: sugar cane harvester

Decisions of the United States Customs Court

Customs Rules Decisions

(C.R.D. 78–9)

MITSUBISHI INTERNATIONAL CORPORATION *v.* UNITED STATES

Motion to dismiss for lack of jurisdiction—
Protest against penalty

Court No. 77–7–01146

[Motion denied.]

(July 25, 1978)

Bogle & Gates (*David M. Salentine* of counsel) for the plaintiff.
Barbara Allen Babcock, Assistant Attorney General (*Sidney N. Weiss*, trial attorney), for the defendant.

Opinion and Order

WATSON, Judge: This action was commenced by a summons which states the underlying claim to be in part the ". . . improper use of penalty proceedings in rate/classification of dispute; failure to advise of grounds for penalty; assessment of penalty on basis of ground not stated." It has its origin in a lengthy protest filed on December 8, 1976 with the district director at Anchorage, Alaska in response to a notification by the district director dated September 10, 1976 that a demand for penalties in the amount of $618,130.19 was being mitigated to $33,073.00.

Defendant has moved to dismiss this action for lack of jurisdiction asserting that it is brought to challenge the imposition of a penalty, a matter which it claims is not within the subject matter jurisdiction of this court in that it is not a decision which can be protested under 19 U.S.C. § 1514(a).[1]

Plaintiff attempts to characterize the action as relating to classification, on the theory that by allegedly considering an alternative classification as a factor in his calculation of a reduced penalty the district director made a decision as to classification rather than as to a penalty.

It would appear however that once the administrative agency expresses its decision in the form of a penalty, that is the form with which plaintiff must contend. If, in the course of later consideration of this penalty, the agency takes into account other factors such as the proper classification of the importation, the dispute between the parties is not thereby transformed into a question of classification. Accordingly, for the purposes of this motion the court considers the protest underlying this action to have been made against a decision related to the imposition of a penalty.

The success of defendant's motion to dismiss therefore depends on the correctness of its asserted proposition that the decision which

---

[1] 19 U.S.C. § 1514(a):

(a) . . . decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

(1) the appraised value of merchandise;

(2) the classification and rate and amount of duties chargeable;

(3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(4) the exclusion of merchandise from entry or delivery under any provision of the customs laws;

(5) the liquidation or reliquidation of an entry, or any modification thereof;

(6) the refusal to pay a claim for drawback; and

(7) the refusal to reliquidate an entry under section 1520(c) of this title,

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Customs Court in accordance with section 2632 of Title 28 within the time prescribed by section 2631 of that title.

plaintiff protests is not one which may be protested pursuant to 19 U.S.C. § 1514(a). The court is of the opinion that this assertion is not established by the cases cited in its support by defendant. For this reason the motion is denied. The possibility that the decision to impose a penalty is a decision as to an exaction within the meaning of 19 U.S.C. § 1514(a)(3) remains open. The cases cited by the defendant do not foreclose such a possibility and the drastic result of dismissal should not be reached in the absence of a clear demonstration of lack of jurisdiction.

A close reading of *Sheldon & Co. et al.* v. *United States*, 8 Ct. Cust. Appls. 215, T.D. 37455 (1917) does not disclose a controlling result. In that case protests were made, *inter alia*, against the imposition of a fine representing 20% of the estimated duty on certain diamonds imported by mail. The court gave its primary attention to the question of whether the protests were filed in time, which depended on whether all the moneys demanded by the collector were duties or "some other form of monetary exaction." The court found that the moneys demanded by the collector were *not* duties. It then opined that *it was not necessary to decide whether the sum required was a fee, charge or exaction within the meaning of the relevant tariff act.* It stated further that "[c]onceding that the importers paid the money in satisfaction of a customs fee, charge, or exaction, then protest not having been filed within 15 days after such payment was too late, and from that it results the decision of the collector became final and conclusive against them."

After this dispositive discussion the court went on to develop an alternative, secondary analysis in which it considered that if the moneys received by the collector were in compromise of a threatened suit in forfeiture, then, since those suits were beyond the jurisdiction of the Board of General Appraisers (predecessor to this court) and the appellate court, no relief could be granted the importers regarding the money paid in compromise or settlement.

It should be noted that the decision in *Sheldon* does not clearly dispose of the question of whether penalties are exactions within the meaning of the tariff acts, and even if the penalty involved therein was viewed as being outside the jurisdiction of the court, the result was reached because the penalty was a sum regarded as a compromise or settlement of a forfeiture proceeding, *a circumstance not present in this case.*

The case of *M. M. Scher & Sons, Inc.* v. *United States*, 24 Cust. Ct. 243, C.D. 1241 (1950) is also viewed as having no dispositive effect on the question before the court. Again the true ground of decision was the untimeliness of the protest, but to the extent the decision

deals with the issue of penalty jurisdiction, it is opaque, confusing and probably mistaken in its perception that it was applying the holding of the *Sheldon* case.

In reality it expanded a point which was secondary and hypothetical to begin with far beyond its initial meaning. In *Sheldon* the thought was expressed as follows:

> If the moneys received by the collector were paid to him *as the representative of the United States attorney, or in compromise of a threatened suit in forfeiture* and not in satisfaction of duties or of a customs fee, charge, or exaction, then no relief can be granted the importers in this proceeding, inasmuch as *forfeitures and suits in forfeitures are beyond the jurisdiction of the Board of General Appraisers and of this Court.* In re Chichester (48 Fed., 281, 285–286). [Emphasis supplied.]

It is apparent that the penalty in *Sheldon* was considered as a payment made in connection with a suit in forfeiture or to obtain the release of the seized importation, and a penalty as a self-contained act, unrelated to release from seizure, or the commencement of forfeiture proceedings would not necessarily be considered in the same manner. The penalty in *Scher* was evidently not demanded under the same circumstances and should therefore not have been as closely linked to suits in forfeiture as it was.

Moreover, the controlling consideration in lack of jurisdiction over suits in forfeiture was "[t]he anomaly . . . of the board of general appraisers taking jurisdiction in a cause pending in a court of the United States for a forfeiture of goods, and deciding, as it were, finally the issues involved . . . ." *In re Chichester*, 48 F. 281, 284 (1891).

It hardly seems reasonable that this court, which is an Article III court of the United States, should find its jurisdiction limited by a theoretical discussion based on the lack of jurisdiction of a predecessor administrative tribunal vis-s-vis the then existing courts of the United States. In any event we are not dealing with suits in forfeiture but with what can be viewed as a suit contesting the denial of a protest against an exaction within the meaning of 19 U.S.C. § 1514(a).

In treating a penalty exaction as if it were exactly the same as a forfeiture and in then relying on the hypothetical discussion in *Sheldon* as conclusive, the court in *Scher* extended the reasoning of the *Sheldon* case beyond its original premise, which was alternative and, in my view, unrelated to pure penalties to begin with.

The case of *C. J. Fendrick* v. *United States*, 71 Treas. Dec. 829, T.D. 48986 (1937) did not involve a penalty.

In *Border Brokerage Co. et al.* v. *United States*, 41 Cust. Ct. 49, C.D. 2020 (1958),[2] at pages 57–58, the development of a distinction between the laws regarding the levying of fines and penalties for violations of the customs laws and the laws governing determination of duties had nothing to do with the jurisdiction of the Customs Court. The distinction was made in order to make a point regarding the differences in burden of proof between reliquidations for fraud under section 521 of the Tariff Act of 1930 (in which the government has the burden of establishing the existence of fraud) and actions for the recovery of penalties (where the burden or proof is on the defendant). That case has no bearing on the question of whether the decision to impose a penalty may be protested under 19 U.S.C. § 1514(a).

The question posed here was not resolved in *Puget Sound Freight Lines et al.* v. *United States*, 36 CCPA 70, C.A.D. 400, 173 F. 2d 578 (1949). There the phrase ". . . all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury)" was read as not intending to describe certain entry and clearance fees imposed on vessels, which fees were viewed as matters arising under the navigation laws and within the jurisdiction of the Secretary of Commerce. Penalties were not involved in that case and it would therefore be improper to place reliance on the later general discussion in that case of the jurisdictional boundaries of the Customs Court, the district courts, and the Court of Claims. This is particularly so in light of the court's emphasis in its analysis of Customs Court jurisdiction, on the connection of the fees and charges to the imported merchandise, a connection which certainly exists in the case of a penalty on the merchandise.

The case of *Carriso, Inc.* v. *United States*, 106 F. 2d 707 (9th Cir. 1939) is similarly distinguishable. I do not think it is too much to require that support for the proposition that this court does not have jurisdiction over protests against penalties should come from cases that deal with penalties *qua* penalties. A matter of this importance should not be controlled by cases lacking a direct and definite determination of this question and should not be established by analogy, inference or supposition.

The series of cases cited by the defendant as examples of instances in which suits involving forfeitures and penalties or questioning underlying forfeitures or penalties were brought in district courts do not shed any light on the question involved here.

Most of them involved the seizure by the government of vehicles used in violation of the law and attempts by interested parties to re-

[2] *Rev'd*, 47 CCPA 75, C.A.D. 732 (1960).

gain possession.[3] The conclusions of the courts in those cases that the courts do not have jurisdiclltion over the decision of the Secretary of the Treasury to deny the petitions for remission have no bearing on the question of whether judicial review may be obtained of a decision for which special provision may have been made in 19 U.S.C. §1514(a).

The mere fact that cases having some connection with penalties are brought in the district courts is not necessarily an indication that in other cases the Customs Court is an improper forum. It may well be that when the government is seeking to enforce the penalty it must use the district courts, but it does not follow that the importer seeking to challenge the decision to impose the penalty is similarly constrained. Again we return to the basic question of whether the statute granting the right to protest a decision as to an exaction encompasses decisions related to the imposition of a penalty.

The exclusivity of this court's jurisdiction (when it has subject matter jurisdiction) is not inconsistent in theory with the subject matter jurisdiction assertedly exercised by the district courts in the cases cited by defendant. This courts jurisdiction would remain exclusive, as it has always been, for those actions which arise from protestable decisions while the district courts would presumably remain the forum for judicial review of those decisions which are not protestable or for those cases in which the relief sought is not within the power of the Customs Court to grant.

For this and other reasons the remaining cases cited by defendant are distinguishable.

One Lot Emerald Cut Stones v. *United States*, 409 U.S. 232 (1972) deals with the question of whether a forfeiture may be accomplished by civil proceedings pursuant to 19 U.S.C. § 1497 following the owner's acquittal on a criminal charge of violating 18 U.S.C. § 545. The Supreme Court answered in the affirmative on the ground that the civil proceeding did not require proof of intent and was therefore unaffected by the lack of intent demonstrated by the acquittal on the criminal charge. At page 237 the court stated that section 1497 ". . . provides a reasonable form of liquidated damages for violation of the inspection provisions and serves to reimburse the Government for investigation and enforcement expenses."

At best the *One Lot Emerald* case indicates, by its existence, that the government seeks inforcement of forfeitures in the district courts, and is accommodated there, none of which negates the existence of

---

[3] *United States* v. *One 1961 Cadillac*, 337 F. 2d 730 (6th Cir 1964); *United States* v. *One 1973 Mexican Truck*, 365 F. Supp. 833 (N.D. Fla. 1973); *Bramble* v. *Kleindienst*, 357 F. Supp. 1028 (D. Col. 1973); *Jary Leasing Corp.* v. *United States*, 254 F. Supp. 157 (E.D.N.Y. 1966).

jurisdiction in the Customs Court when the importer seeks to challenge decisions relating to the imposition of a penalty.

Lee v. *Thornton*, 420 U.S. 139 (1975) has no connection to the question here at issue. In that action 19 U.S.C. §§ 1460 and 1618 were challenged insofar as they mandated procedures to effect forfeiture and remission or mitigation of penalties imposed after border patrol agents apprehended appellants and seized their vehicle when they entered the United States from Canada without passing through a customs station.

The Supreme Court ruled that it had no jurisdiction over appellants' claim to enjoin enforcement of the challenged provisions of the customs laws because the Tucker Act (28 U.S.C. § 1346(a)(2)), which was the asserted ground for jurisdiction below, did not empower the district court to grant injunctive or declaratory relief.

This is hardly the source of a rule that a penalty is not an exaction and may not be challenged in the Customs Court under appropriate circumstances. Moreover since the appellants were seeking a declaratory judgment, injunctive relief, mandamus relief and damages, none of which the Customs Court can provide, the bringing of action in the district court is not an indication of the lack of jurisdiction in the Customs Court in those instances when the relief sought is of the type available in the Customs Court. *See SCM Corporation* v. *United States* (*Brother International Corporation, Party-in-Interest*), 80 Cust. Ct. —, C.R.D. 78–2 (1978).

Leiser v. *United States*, 234 F. 2d 648 (1st Cir. 1956) is factually interesting but without relevance to this dispute. There the granting of a motion for summary judgment in the government's libel proceeding against 532.33 carats of diamonds was affirmed because the person in possession of the diamonds was found to be "arriving" within the meaning of 19 U.S.C. §§ 1496 and 1498(a)(6) despite the fact that his arrival in the United States was the result of an unintended and unforeseen diversion of his airplane due to bad weather.

Sarkisian v. *United States*, 472 F. 2d 468 (10th Cir. 1973) was a legal tug of war over the seizure of certain jewelry. The government lost because it did not start forfeiture proceedings quickly enough. The opinion has no relevance to the jurisdictional question here involved.

In sum, none of the cases cited by defendant indicates the existence of a clearly established principle that decisions regarding the imposition of a penalty are not subject to protest under 19 U.S.C. § 1514. In addition, the defendant points to no statutory material or legislative history which would justify the dismissal it seeks.

Consequently the motion to dismiss is Denied.

(C.R.D. 78–10)

MICHELIN TIRE CORPORATION *v.* UNITED STATES

Opinion and order on defendant's motion for a protective order and various motions to intervene and objections to disclosure

Court No. 75–9–02467

[Motion for protective order granted; motions to intervene and objections to disclosure denied.]

(Dated July 25, 1978)

Windels, Marx, Davies & Ives (*Paul Windels, Jr.* and *John Y. Taggart* of counsel) for the plaintiff.

Barbara Allen Babcock, Benjamin R. Civiletti, Assistant Attorneys General (*David M. Cohen,* Chief, Customs Section, *George W. Calhoun* and *Edmund F. Schmidt,* trial attorneys), for the defendant.

Dickstein, Shapiro & Morin (*Kenneth L. Adams* of counsel) for Charles W. Colson.

Williams & Connolly (*Edward Bennet Williams* and *Michael E. Tigar* of counsel) for John B. Connally.

Whiteford, Hart, Carmody & Wilson (*Frank H. Strickler* of counsel) for Harry R. Haldeman.

Laurence Mead Higby, pro se.

James J. Bierbower for Jeb Stuart Magruder.

Nicholas S. McConnell for Kenneth Wells Parkinson.

WATSON, Judge: This action is presently in the pretrail discovery stage. It was brought to contest the denial by the government of a protest by Michelin Tire Corporation against the assessment of countervailing duties on importations of its radial tires from Canada.

One of plaintiff's claims is that the decision of the government to assess countervailing duties was improperly influenced by payments made by American tire manufacturers.

In connection with this claim the court, on June 3, 1977, ordered certain discovery which included materials in the possession of the government, which materials had been before the grand jury during the course of the grand jury investigation conducted by the Watergate Special Prosecution Force. In order to release those materials the government felt the need to seek the authorization of the District Court for the District of Columbia, under whose jurisdiction the grand juries had been convened. After allowing delays in compliance with its order this court, on May 9, 1978, ordered final compliance. On May 30, 1978 Chief Judge William B. Bryant of the District Court for

the District of Columbia ordered the case, which the defendant had commenced to seek authorization, transferred to this court.

As a consequence this court how has before it certain matters which were pending in that action, chiefly, motions to intervene and objections to disclosure by persons whose documents or summaries thereof are contained in the grand jury materials and a protectiive order sought by the defendant to govern the use of the materials.

The objections to disclosure are based principally on the claim that plaintiffs have not demonstrated a compellng necessity or particularized need, which is the normal standard for allowing discovery of matters occurring before the grand jury under Rule 6(e) of the Federal Rules of Criminal Procedure. In addition, one objection is based on a claim that disclosure will violate attorney-client or attorney work-product privilege while another individual objection is based on an asserted agreement that the government was to return all materials following the conclusion of the grand jury investigations.

The court finds no justification for requiring a demonstration of particularized need or any other exceptional standard of discovery in this matter. Although there is somewhat of a dearth of authority in this area of the law there is a definite distinction made between discovery for the purpose of learning what occurred before the grand jury and discovery, for its own sake, of materials which were before the grand jury.

This distinction was clearly drawn by Judge Tauro in *Capital Indemnity Corp.* v. *First Minnesota Construction Co. et al.*, 405 F. Supp. 929 (D.C. Mass. 1975), when he allowed civil discovery of documents before the grand jury even though the grand jury proceedings were then in progress. In so doing he followed the opinion of the second circuit in *United States* v. *Interstate Dress Carriers, Inc.*, 280 F. 2d 52 (2d Cir. 1960) in which the court held that ". . . such inspection does not constitute a 'disclosure of matters occurring before the grand jury' proscribed by Rule 6(e)." 280 F. 2d at 53. The circuit court stated further that ". . . when testimony or data is sought for its own sake—for its intrinsic value in the furtherance of a lawful investigation—rather than to learn what took place before the grand jury, it is not a valid defense to disclosure that the same information was revealed to a grand jury or that the same documents had been, or were presently being, examined by a grand jury." 280 F. 2d at 54.

A similar distinction is found in *Philadelphia Electric Company, et al.* v. *Anaconda American Brass Company, et al.*, 41 F.R.D. 518 (E.D. Pa. 1967). In that case plaintiffs in a civil antitrust action were allowed to discover certain bills of particulars which had been

furnished to defendants in the course of related criminal proceedings even though the bills may have, to some extent, reflected information supplied to the grand jury. *Cf. United States* v. *Saks & Co.*, 426 F. Supp. 812 (S.D.N.Y. 1976).

In this case the grand jury has long since concluded its work and the material sought has no direct connection with the content of its deliberations. Consequently the considerations weighing against disclosure are even weaker here than they were in the cases of *Capital Indemnity Corp.* v. *First Minnesota Construction Co., supra*, and *Philadelphia Electric Co.* v. *Anaconda American Brass Co., supra.*

The remaining objections as to attorney-client and work-product privilege are not advanced with sufficient particularity and support to warrant serious consideration.

In addition the court is satisfied that to the extent there was an agreement to return materials to one of the persons objecting, it has been complied with. What remains are only extracts or summaries which were not covered by the agreement and are properly discoverable.

It is therefore

ORDERED that the various pending motions to intervene and objections to disclosure be Denied.

The court is further of the opinion that because these materials are associated with events of recent notoriety which remain the focus of intense public interest and could become the object of injudicious use, they should be discovered within the confines of a protective order.

It is therefore ORDERED that:

The materials shall be delivered to the firm of Windels, Marx, Davies & Ives, Esqs. where they shall be received and safeguarded by John Y. Taggart, Esq. under such conditions as will insure compliance with this order.

Access to the materials and discussion thereof shall be limited to attorneys of Windels, Marx, Davies & Ives and attorneys for Michelin Tire Corporation who have hitherto been actively participating in the conduct of this action.

The materials may not be disclosed to, or discussed with, any other persons except as may be permitted upon further application to the court.

The materials shall be used only in this action.

The materials shall not be photocopied or otherwise reproduced except for the purpose of inclusion in a filing with the court. In that case the copying shall be done by an attorney whose access to the materials is authorized by this order. A full record of the appropriate

details of such copyings shall be maintained. Any copies or documents containing copies made pursuant to this provision, which remain in the possession of the attorneys for plaintiff, shall be subject to all the provisions of this order.

The materials shall be returned to the defendant upon the completion of the proceedings in the Customs Court. During the pendency of any appeal the plaintiff's attorneys shall continue to have access to the materials in accordance with the applicable provisions of this order.

The materials may be examined under the supervision of the Clerk of the Court by the authorized attorneys for plaintiff, prior to the delivery of the materials to the custody of plaintiff's attorneys.

Nothing in this order shall preclude further application by a party for modification of its terms nor is this order intended to affect disputes regarding discovery of these materials which may arise in other actions.

(C.R.D. 78–11)

RELIABLE CHEMICAL COMPANY *v.* UNITED STATES

Motion to dismiss for lack of jurisdiction—Motion for suspension

Court No. 76–2–00311

[Motions denied.]

(Dated July 26, 1978)

Ralph W. Kalish for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

Opinion and Order

WATSON, Judge: In response to plaintiff's motions to designate Court No. 73–10–02963 a test case and to suspend Court No. 76–2–00311 thereunder, defendant cross moved to dismiss the latter case for lack of jurisdiction.

Defendant's motion to dismiss is based on the asserted prematurity of the protest, a circumstance it has not demonstrated to the satisfaction of the court. Although the protest was filed on July 22, 1975 and the bulletin notice of liquidation was made on July 25, 1975, it appears that plaintiff, at the time of its protest, was already in possession of a notice of liquidation from defendant.

Defendant apparently sends out a notice prior to the date of the bulletin notice which it characterizes as a "courtesy" notice. The court views this notice (a blank copy of which is reproduced below)

as being a notice of liquidation sufficient to be protested under 19 U.S.C. §1514 even though it is not the notice established by regulation in 19 C.F.R. 159.9 (1975) pursuant to 19 U.S.C. §1500.

As can be seen the notice is entitled "Notice of Entries Liquidated". It give no direct indication that it is intended to be an advance, informal or courtesy notification. In its margin it states, "your entry was liquidated on the date indicated for the liquidated amount."

The mere fact that the date indicated was a future date does not overcome the dominant impression that the document is conveying notice of a decision already reached. In point of fact it *is* conveying that notice. It is simply not doing so in the form which defendant, in its regulations, establishes as the ordinary form of notice.

There is no shortage of cases holding that notice of liquidation must be given in the form and manner prescribed by the Secretary of the Treasury and that the regulations so prescribed have the force of law. But this principle was enunciated to decide disputes centered on the question of whether faulty attempts to conform to the regulations could accomplish a proper notice of liquidation. It did not contemplate the use of an alternative and self-sufficient form of notice, chosen by the Secretary of the Treasury.

It would be improper for defendant, having chosen this form of notice, to then fall back on its regulations and attack the natural, reasonable and diligent response of plaintiff as premature under the law and it would be unjust for a court to sanction such conduct.

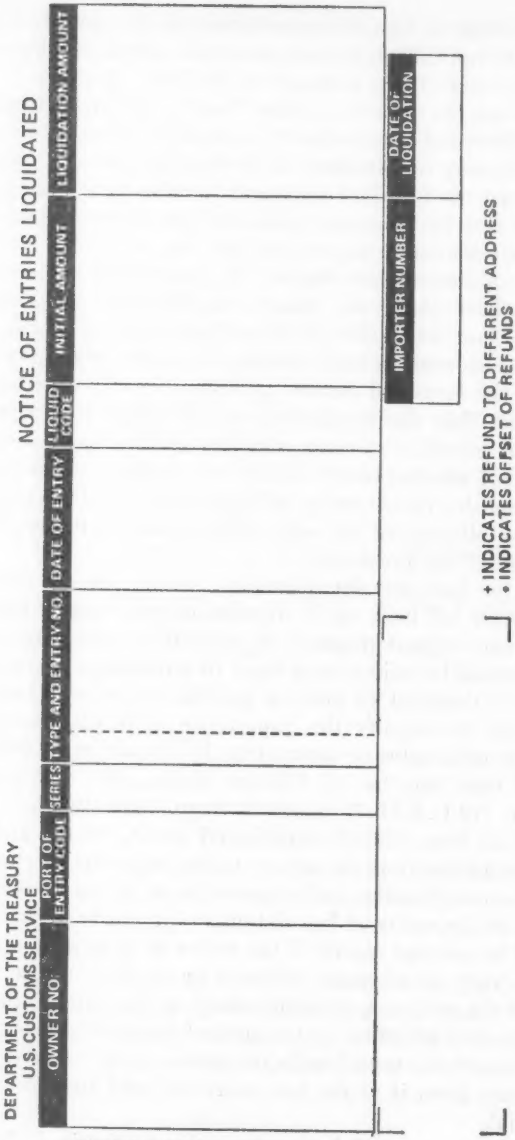
The law is designed to provide judicial review of administrative decisions, not to magnify the importance of regulations which the agency itself obfuscates or contradicts by its actions, however well-intentioned they may be. *Cf. Colonna & Co., Inc.* v. *United States*, 75 Cust. Ct. 179 C.R.D. 75–4, 399 F. Supp. 1389 (1975).

This official form 4333–A constituted direct, formal and decisive notice of liquidation from the agency to the importer. Its characterization as a "courtesy" notice is of no importance. Its nature is discernible on its face. It is a notice of liquidation and it can be protested.

It would be another matter if the notice in question stated clearly that it was only an advance, informal or courtesy notice, drew the attention of the recipient, unambiguously, to the date of the intended formal notice and informed the recipient of its ensuing right to protest. These characteristics would make the notice a true "courtesy" notice. In its present form it is far less courteous and therefore far more consequential.

For the above reasons defendant's motion to dismiss is denied.

Plaintiff's motion to suspend Court No. 76–2–00311 under Court No. 73–10–02963 is denied.



Your entry was liquidated on the date indicated for the liquidation amount. Any difference between this amount and the initial amount paid will be billed or refunded to you.

(C.R.D. 78–12)

MICHELIN TIRE CORPORATION *v.* UNITED STATES

Memorandum opinion and order on defendant's motion to limit the scope of trial and plaintiff's motion to place a burden of proof on defendant

Court No. 75–9–02467

[Motions denied.]

(Dated July 27, 1978)

Windels, Marx, Davies & Ives (*Paul Windels, Jr., John Y. Taggart* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*David M. Cohen*, Chief, Customs Section; *Edmund F. Schmidt*, trial attorney), for the defendant.

WATSON, Judge: This is an action brought pursuant to 28 U.S.C. § 2632 contesting the denial (under 19 U.S.C. § 1515) of protests filed in accordance with 19 U.S.C. § 1514. The protests were made against the imposition of countervailing duties on entries of tires imported by plaintiff from Canada.

At a pretrial conference the defendant took the position that in this action the court is limited to a review of the administrative record of the proceedings in which the Secretary of the Treasury decided to impose countervailing duties and further limited to deciding whether that decision was arbitrary or capricious. In addition a dispute was apparent as to which party had the burden of proof in this action. Accordingly, the court required the parties to address themselves to these matters in memorandums of law and is treating them as a motion by defendant to limit the scope of trial and a cross motion by plaintiff to place the initial burden of proof on the defendant.

The court is firmly of the opinion that the issue of the correctness of the decision to impose countervailing duties on these entries is subject to a complete trial on the merits without any limitation whatsoever. Defendant apparently looks on this action as being merely a review of whatever countervailing duty proceeding was conducted under 19 U.S.C. § 1303 and is therefore led into the error of presuming that it is governed by principles of judicial review of administrative actions.[1] In reality this action is governed by the normal standards of a trial on the merits as derived from the statutes related to the creation

[1] In any event plaintiff has made a persuasive argument that if indeed the scope of review embodied in the Administrative Procedure Act, 5 U.S.C. § 706, applied here, the circumstances would be such as would warrant the *de novo* review of 5 U.S.C. § 706(2)(F). *See* H.R. Rep. No. 1980, 79th Cong., 2d Sess., pp. 45–46.

of the cause of action, notably 19 U.S.C. § 1514 which reads in relevant part as follows:

> . . . [D]ecisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—
>
> . . . .
>
> (2) the classification and rate and amount of duties chargeable;
>
> (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;
>
> . . . .
>
> shall be final and conclusive . . . unless a civil action contesting the denial of a protest . . . is commenced in the United States Customs Court.

Thus, this court obtains its jurisdiction of this case by virtue of a statute which renders the entire substance and underpinning of the decision to assess duty subject to challenge in language of notable broadness.

The underlying decision of the Secretary of the Treasury to order the assessment of countervailing duties is subject to a full trial on the merits by virtue of its being an order or finding entering into the decision of the appropriate customs official to assess countervailing duties on the entries involved in this action. The correctness of the Secretary's decision is therefore *an issue* in the case not the direct objective of the action. It may be the ultimate focus of attention but it is not the inducer of the action and certainly not the determinant of its scope.

In other words, the original decision of the Secretary of the Treasury to impose countervailing duties could not be immediately challenged in court. Only when it was implemented in an assessment of duties on specific entries of merchandise did judicial review become available following the denial of the protest. Then a challenge to the decision to assess duties opens up all the underlying decisions to a full examination. In short, the purpose of the statutory scheme is not a judicial review of underlying administrative proceedings (although the court can examine all aspects of them if necessary) but a trial of issues raised in a challenge to a duty assessment.

Were this not enough, defendant has failed to cite a single case in this court in which the limitations it espouses were adopted.

Turning to the matter of the burden of proof in this action the relevant statute is 28 U.S.C. § 2635(a) which provides as follows:

> In any matter in the Customs Court:
>
> (a) The decision of the Secretary of the Treasury, or his delegate, is presumed to be correct. The burden to prove otherwise shall rest upon the party challenging a decision.

Plaintiff asserts that an initial burden ought to be placed on the defendant to establish facts which would support the imposition of the countervailing duties. Plaintiff argues that this would be proper because the defendant allegedly has not adequately disclosed the factual basis on which its decision was based, committed manifest legal error, and was otherwise improperly motivated.

The court is not persuaded that plaintiff has demonstrated, in its arguments, the propriety of modifying the burden of proof expressed in the statute. Consequently the resolution of the matters raised in its arguments must await that time when plaintiff advances proof directed to overcoming the presumption of correctness. The cross motion itself must be denied.

In light of the above it is hereby

ORDERED that defendant's motion to limit the scope of trial be denied, and it is further

ORDERED that plaintiff's motion to place a burden of proof on defendant be denied.

International Trade Commission Notices

Investigations by the United States International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

RAYON STAPLE FIBER FROM BELGIUM

NOTICE OF NEW INVESTIGATION (AA1921–186)

TERMINATION OF PRIOR INVESTIGATION (AA1921–181)

An investigation (AA1921–181) was commenced on May 19, 1978 (43 F.R. 21740). The Secretary of the Treasury on July 28, 1978 (43 F.R. 32915) reconsidered the basis for his fair value comparisons in the antidumping investigation involving viscose rayon staple fiber from Belgium that is being, or is likely to be, sold at less than fair value, and, as a result of his reconsideration, he has modified his determination of May 1, 1978 (43 F.R. 18619) such that the weighted average margin with respect to the class or kind of articles that are the subject of the above investigation is increased from 6.7 percent to 57.6 percent.

Having received new and substantially different advice from the Secretary of the Treasury with regard to the importation of rayon stapel fiber from Belgium, it is obvious that for the Commission to make a determination based upon the original advice of the Secretary would be or might be a mistake of fact. There is not enough time before this investigation would run against the statutory time limit to give interested persons an opportunity to comment upon the change, which is not only a right guaranteed to them by the Antidumping Act itself, but perhaps also by considerations of due process. We

must therefore afford interested parties opportunity to comment, notwithstanding the statutory time limits. Moreover, the Secretary appears to have given us a new determination that effectively vacates all or at least a portion of his prior advice to the Commission, justifying a termination of the present investigation and instituting a new investigation. We determine, therefore, that our investigation into injury to the domestic industry based upon the margin reported on May 1, 1978, is now moot.

The Commission held a hearing in the investigation No. AA1921–181 on June 20, 1978, and received evidence from and the views of the domestic producers, the importer, and the Belgian producer. Inasmuch as the new determination of the Treasury involves solely a change in the weighted average margin, the Commission is particularly interested that written comments address this matter. The written statements and transcript of the hearing from the prior investigation will remain relevant to the Commission's determination in the new investigation.

The U.S. International Trade Commission, therefore, on August 25, 1978:

1. Terminated investigation No. AA1921–181, instituted on May 19, 1978 (43 F.R. 21740), under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) without any determination because of the intervening advice from the Secretary;

2. Instituted a new investigation (AA1921–186) to determine whether an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation into the United States from Belgium of rayon staple fiber. The title of the new investigation will be the same as the investigation No. AA1921–181; and

3. Determined that there does not at this time appear to be good and sufficient reason to hold a new public hearing in the investigation; however, in accordance with 19 CFR 208.4, any interested party who believes that a public hearing should be held, may, within 10 days after the date of publication of this notice, submit a request in writing to the Secretary of the Commission and the reason for such request.

The Commission intends to expedite the investigation in this case, and to complete the investigation and make its determination within 30 days after the date this notice is published in the Federal Register. Parties wishing to submit written statements should therefore submit them in a timely manner, at the latest 14 days after the date this notice is published in the Federal Register.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued: August 3, 1978.

CERTAIN CATTLE WHIPS

Investigation No. 337–TA–57

NOTICE OF INVESTIGATION

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 7, 1978 (and amended on July 19, 1978), under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Stockmen's Inc., Lawton, Iowa 51030, alleging that unfair methods of competition and unfair acts exist in the importation of certain cattle whips into the United States, or in their sale, by reason of the alleged coverage of such cattle whips by the claims of U.S. Letters Patent 3,356,294. The amended complaint alleges such unfair methods of competition and unfair acts have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests permanent exclusion from entry into the United States of the articles in question.

Having considered the amended complaint, the U.S. International Trade Commission on August 3, 1978, ordered:

1. That, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine, under subsection (c) whether, on the basis of the allegations set forth in the amended complaint and the evidence adduced, there is a violation of subsection (a) of this section in the unauthorized importation of certain cattle whips into the United States, or in their sale, by reason of the alleged coverage of such cattle whips by the claims of U.S. Letters Patent 3,356,294, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

2. That, for the purpose of this investigation so instituted, the following are hereby named as parties:

a. The complainant is: Stockmen's Inc., P.O. Box 244, Lawton, Iowa 51030.

b. The respondents are the following companies alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, and are parties upon which the complaint and this notice are to be served:

i. The Action Co., P.O. Box 528, McKinney, Tex. 75069.
ii. Skyline Imports Ltd., P.O. Box 856, Red Deer, Alberta, Canada.

c. Robert M. M. Seto, U.S. International Trade Commission, 701 E Street N.W., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation.

3. That, for the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the United States International Trade Commission's Rules of Practice and Procedure, as amended (19 CFR 210.21). Pursuant to section 201.16(d) and 210.21(a) of the rules, such responses will be considered by the United States International Trade Commission if received not later than 20 days after the date of service of the amended complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and of this notice, and will authorize the presiding officer and the U.S. International Trade Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The amended complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the New York City office of the U.S. International Trade Commission, 6 World Trade Center.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued: August 4, 1978.

STAINLESS STEEL ROUND WIRE FROM JAPAN

[AA1921–INQ.–17]

NOTICE OF INQUIRY AND HEARING

The U.S. International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on July 26, 1978, that, during the course of its preliminary investigation with respect to stainless steel round wire from Japan in accordance with section 201(c) of the Antidumping Act of 1921, as amended (19 U.S.C.

160(c)), Treasury had concluded from the information available to it that there is substantial doubt that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of this merchandise into the United States. Therefore, the Commission on August 1, 1978, instituted inquiry AA1921–Inq.–17, under section 201(c)(2) of that act, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

The Treasury advised the Commission as follows:

DEAR MR. CHAIRMAN: In accordance with section 201(c) of the Antidumping Act of 1921, as amended, an antidumping investigation is being initiated with respect to stainless steel round wire from Japan. Pursuant to section 201(c)(2) of the act, you are hereby advised that the information developed during our preliminary investigation has led us to the conclusion that there is substantial doubt that an industry in the United States is being, or is likely to be, injured by reason of the importation of this merchandise into the United States.

During a period of rising domestic consumption from 1975 through 1977, imports, and particularly those from Japan, increased as a share of consumption. At the same time capacity utilization rates, profit, and employment levels in the domestic industry declined significantly. However, information on domestic prices and costs and on LTFV margins, with reference to this merchandise, indicates that elimination of LTFV margins would not substantially eliminate the margin by which petitioners are being undersold by the imported merchandise from Japan. Nor apparently would such price revisions result in prices for the merchandise imported from Japan equal to or exceeding the cost of production of the domestic industry for such merchandise. Moreover, domestic sales of coarse wire have nearly doubled between 1975 and 1977 and sales of fine wire are no lower in 1977 than in 1975.

Accordingly, from the available information, the Department has concluded that there is substantial doubt that an industry in the United States is being, or is likely to be, injured by reason of the alleged sales at less than fair value from Japan.

Based upon the data submitted by petitioners, there are margins of sales at less than fair value of as much as 65 percent relative to this merchandise from Japan.

For purposes of this investigation, as recommended by your Office of Nomenclature, "stainless steel round wire" means "stainless steel wire, as defined and provided for in item 609.45, Tariff Schedules of the United States."

Some of the enclosed data is regarded by Treasury to be of a confidential nature. It is therefore requested that the Commission consider all the enclosed information to be for the official use of the ITC only, not to be disclosed to others without prior clearance from the Treasury Department.

Sincerely yours,

HENRY C. STOCKWELL, JR.,
Acting General Counsel.

Hearing—A public hearing in connection with the inquiry will be held on Thursday, August 17, 1978, beginning at 10 a.m., e.d.t., in the Commission's hearing room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. All persons shall have the right to appear in person or by counsel, to present information, and to be heard. Requests to appear at the public hearing should be received in writing in the office of the Secretary of the Commission not later than noon Monday, August 14, 1978.

Written statements—Interested parties may submit statements in writing in lieu of, and in addition to, appearance at the public hearing. A signed original and 19 true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such statements should be received no later than Thursday, August 17, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued: August 1, 1978.

Index

U.S. Customs Service

Customs Court

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)

U.S.MAIL

U.S. GOVERNMENT PRINTING OFFICE: 1976